

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Robert L. Davis  
Dan McFadden

**SUBJECT: ENTERTAINMENT ZONE  
COST RECOVERY**

**DATE:** May 24, 2007

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Approved

/s/

Date 05/29/07

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The memorandum is prepared in response to the Mayor's March Budget Message that directed the Police Department to report to the City Council on how overtime costs for enforcement in the Entertainment Zone could be assessed to downtown nightclubs. This memorandum is also prepared in response to the Mayor's 2007 Transition Committee Recommendation #6, which pertains to the costs related to Entertainment Zone policing. Recommendation #6 addresses, in part, recovering policing costs from private businesses in the Entertainment Zone (EZ).

## **BACKGROUND**

In June 1997, the San José City Council approved the first Entertainment Zone Policing Plan (EZPP). The EZPP was developed to eliminate secondary employment of Police Officers at nightclubs in the downtown area. This plan sought in part to recover the costs of policing the EZ through fees paid by nightclubs, based on the nightclub operation and regulations that existed on their Entertainment Permit, Conditional Use Permit, occupancy, and an inspection by the Department. The benchmark fee was designed to match the fees paid to officers already working secondary employment for the nightclubs.

Though approved by the City Council, the EZPP was not fully implemented; the nightclubs were never required to pay the full costs associated with policing the EZ. As a result, the Police Department has incurred major overtime expenditures amounting to an annual cost of approximately \$1.2 million to maintain public safety in the EZ. As the vibrancy of this area increases, business owners, the City of San José, and the San Jose Redevelopment Agency are expending numerous resources to foster the growth and economic development of the area.

Current budget constraints demand a new plan be created which shares the costs of maintaining public safety between private businesses in the EZ and the City of San José. This plan will create an equitable sharing of costs, enabling the Police Department to recover a gap currently estimated at \$400,000-\$600,000 for EZ overtime expenditures, which could change as staffing adjustments occur with the extended hours procedure to support the 90-day soft closing Pilot Program.

## **ANALYSIS**

Policing the EZ is a very complex issue. Current City data shows total EZ establishment occupancy to exceed 10,000 patrons. To ensure public safety, a pool of approximately thirty to fifty officers are necessary to monitor the area Thursday through Sunday nights. Thursday evening averages 21 officers and five sergeants, Friday and Saturday evening averages 44 officers and six sergeants, and

Sunday evening averages five officers and one sergeant, depending upon the season and scheduled events. Officers, after working their regular ten-hour shift, will work two hours of Entertainment Zone overtime to focus police resources at nightclubs' closing times. Officers make arrests as necessary, issue citations and enforce curfew laws. To transition to a 3:00 a.m. closing (currently under consideration) would require an increase in overtime hours for EZ officers and will further extend their shift.

Public safety in the EZ is maintained by three primary means:

- Visible presence deterring violent behavior
- Immediate response to incidents via the tactical distribution of EZ officers
- Facilitation of mass public egress from the downtown area in the hours after nightclub closings

EZ Officers also assist in maintaining a vibrant and pleasant visitor experience by:

- Assisting the public by being an information resource
- Assisting in the enforcement of ABC laws to reduce incidents of public intoxication, and the serving of alcohol to minors and obviously intoxicated persons
- Providing a safe and easily accessible parental reunification area for curfew violators
- Provide a readily available resource to business owners and managers

The distribution of officers is based upon:

- Nature of individual establishments, e.g.:
  - nightclubs with dancing / live entertainment (businesses possessing an Entertainment Permit)
  - Type of ABC Licensee (Type 41, 47, or 48)
  - Bars serving alcohol which do not require an Entertainment Permit
  - Late night food-serving establishments (open until 3:00 a.m., which are post-closing gathering points and quite often areas of violence)
- Occupancy of the establishment
- Physical size, to include square footage and interior layout
- Environmental design issues (sidewalk café permits, proximity to other establishments, etc.)
- Proximity to post-closing congregational areas (parking lots, late night food-serving establishments)
- Current patterns of violence
- Historical patterns of disorderly conduct, aberrant behavior and criminal activity
- Calls for police and EMS services
- Point of origin for arrestees and/or violence (often issues originate inside an establishment, and are exacerbated when management or staff do not address the issues. These problems are only visible when the subjects involved exit the club)
- Violations of Entertainment and Conditional Use permits by establishment owners, management, or staff

In turn, much of the aforementioned information can be relied upon to provide a matrix for a Cost Recovery Program. Additional criteria may also be calculated into the process. Below are four general categories of the types of businesses in the downtown area, which illustrate the variables that must be considered in any Cost Recovery Program. In the examples, *nightclub* defines an establishment which possesses an Entertainment Permit and serves alcohol past 10 pm.

**A: Small Bar or Restaurant:**

- Typical Occupancy less than 100
- No Entertainment Permit
- No fixed Police deployment
- Rarely violates ABC laws or requires Police services
- Patron egress at closing poses minor impact to the EZ

Approximately 20% of the current EZ establishments fall into this category.

**B: Large Bar or Restaurant or smaller Nightclub:**

- Typical Occupancy 100-300
- May or may not possess an Entertainment Permit
- Police deployment varies, may be fixed at times due to current trends in establishment **or** patron conduct
- Occasionally violates ABC regulations, Entertainment or Conditional Use Permit requirements, or criminal statutes
- Patron egress at closing poses a moderate impact to the EZ

Approximately 45% of the current EZ establishments fall into this category.

**C: Nightclub or a large Restaurant which operates as a Nightclub after 10 pm:**

- Typical Occupancy exceeds 300 patrons
- Possesses an Entertainment Permit
- High likelihood of, or regular, Police deployment
- Consistently generates complaints or demands Police action, experiences violations of ABC regulations, or is a source from which disorderly conduct emanates affecting the EZ
- Patron egress at closing poses a major impact to the EZ

Approximately 35% of the current EZ establishments fall into this category.

**D: Late Night Eating Establishments:**

- Serve food past 1 am
- Offer points of congregation for nightclub and bar patrons, exacerbated by:
  - Environmental design issues (proximity to nightclubs/bars, proximity to parking lots, physical size of private parking lots, unsecured private or public parking lots, poor lighting, etc.)
  - Lack of, or insufficient, private security

- Consistently demands Police presence after club closings due to disorderly conduct, criminal acts, and traffic-related issues stemming from EZ patrons

Approximately 5-10 establishments of this type operate at any given time.

## **CONCLUSION**

The cost to police the Entertainment Zone has continually grown over the last decade along with its surge in popularity. The successful future of the core downtown area is of vital importance to the City of San José and business owners who choose to operate at the core of the Capital of Silicon Valley. At the same time, it is clear private businesses must share in the cost of maintaining public safety for the same patrons from which they profit.

In order to develop and implement an Entertainment Zone Cost Recovery Plan, a working group, to include the City Attorney's Office, City Manager's Budget Office, and Finance Department, will be established this summer to fully assess and implement an Entertainment Zone Cost Recovery Plan. The plan should encompass the variables used to deploy Police Officers in the downtown area and cover all categories discussed above. The plan should allow for modification in the fee on a regular and predetermined schedule based upon changes in the demand for City services. The allocation of a fee should be based on achieving cost recovery for City services provided in the downtown area. The fee assessment can be based on the level of occupancy of each establishment, since the customers drive the demand for City services. Larger facilities would bear a higher cost than a smaller establishment. The collection of the fee could occur upon an annual renewal of their permits and licenses to ensure pre-payment for the anticipated need, rather than after the fact.

The working group should assess the option to create a fee matrix to ensure all businesses in the EZ pay their equitable share for City services directly related to their customers. The matrix would account for the variables discussed above as well as any additional variables or direct costs determined during further analysis and matrix development. Businesses which operate at a standard that reduces the need for City services would be rewarded with lower costs, while those that consistently draw on more City resources would bear a greater burden.

Consistent with City practice, the working group should include community outreach as part of the EZ Cost Recovery Plan and include representative of the four types of establishments as outlined above.

/s/  
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/s/  
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